Pioneer Concrete of Arkansas, Inc. ***and*** **Chauffeurs, Teamsters and Helpers, Local Union No. 878** ***and*** **International Union of Operating Engineers, AFL–CIO, Local Union 382**. Cases 26–CA–18607 and 26–CA–18610

December 31, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On September 17, 1998, Administrative Law Judge Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings, and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Pioneer Concrete of Arkansas, Inc., Conway, Jacksonville, Little Rock and North Little Rock, Arkansas, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Melvin Ford, Esq., for the General Counsel..
David Fielding, Esq., of Ft. Worth, Texas, for the Respondent.

DECISION

PARGEN ROBERTSON, Administrative Law Judge. This hearing was held in Little Rock, Arkansas, on July 13, 1998. The Teamsters filed the charge in 26–CA–18607 on April 14, 1998. The charge in 26–CA–18610 was filed by the International Union of Operating Engineers, AFL–CIO (IUOE) on April 16, 1998. A complaint issued on May 12, 1998. In consideration of the full record including briefs filed by the Respondent and General Counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent admitted that at material times it has been a corporation with offices and places of business in North Little Rock, Conway, Alexander, Little Rock, Maumelle, and Jacksonville, Arkansas, where it has been engaged in the ready-mix concrete business; and based on a 12-month projection of its operations since March 28, 1998, at which time the Respondent commenced its operations, it will sell and ship from its Arkansas facilities and it will purchase and receive at its Arkansas facilities goods and materials valued in excess of $50,000 to and from points outside Arkansas. The Respondent admitted that it has been an employer engaged in commerce at material times.

II. LABOR ORGANIZATION

The Respondent admitted that the Charging Parties (Teamsters and IUOE) have been labor organizations at material times.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The issue is does the Respondent have an obligation, as a successor employer, to recognize and bargain with the two Charging Party Unions.

In March 1998, the Respondent became the Employer for former employees of 15 companies owned by Charles Weaver. Before 1998 Weaver owned three concrete companies. Those included L&S Concrete Company with facilities in North Little Rock and Conway, Arkansas. The Teamsters represented a bargaining unit of those L&S employees. Another company owned by Weaver was Gilliam Brothers with facilities in Jacksonville, Little Rock, and North Little Rock, Arkansas.[1] IUOE represented a bargaining unit of Gilliam Brothers employees. The third company was Webco. A union did not represent the. Webco employees. L&S and Gilliam ran ready-mix concrete operations. Webco furnished support operations including mechanics and maintenance employees, and it operated tanker and dump trucks.

The Respondent is a subdivision of a multinational conglomerate. Included within its operations are four divisions in Arkansas including Little Rock, Ft. Smith, El Dorado, and Texarkana. The Little Rock division includes the former Weaver companies—L&S, Gilliam, and Webco.

The Respondent obtained the operating assets of the three Weaver companies by March 30, 1998,[2] and employed the employees of those three companies. The Respondent's regional manager, Robert Van Til, testified the former employees of Gilliam, L&S, and Webco were hired as employees of the Respondent, with a different wage structure, and different insurance and pension benefits than the employees had under the Weaver companies. The equipment formerly designated as Gilliam, L&S, or Webco was redesignated as Pioneer Concrete.

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] In adopting the judge's finding that the Respondent is a sucessor employer, we rely on the court's decision in *Banknote Corp. of America v. NLRB*, 84 F.3d 637, 647 (2d Cir. 1996), enfg. 315 NLRB 1041 (1994), where the court likewise found a sucessor relationship to exist. In doing so, the court upheld the Board's reasoning that: "[T]he Board has consistently held that long-established bargaining relationships will not be disturbed where they are not repugnant to the Act's policies. The Board places a heavy evidentiary burden on a party attempting to show that historical units are no longer appropriate." We find that the Respondent has not met that burden here. Accord: *Trident Seafoods Inc. v. NLRB*, 101 F.3d 111 (D.C. Cir. 1996), modifying 318 NLRB 738 (1995). In so concluding, we do not rely on *Bry-Fern Care Center, Inc. v. NLRB*, 21 F.3d 706 (6th Cir. 1994), enfg. 309 NLRB No. 53 (1992), cited by the judge, which is inapposite inasmuch as it involves the appropriateness of a unit in an initial organizing context.

[1] Gilliam also operated a facility at Alexander, Arkansas, when business justified. Since purchasing Gilliam and beginning operations, the Respondent has opened and operated the Alexander facility.

[2] The Respondent's regional manager, Robert Van Til, described the Respondent's purchase of Gilliam, L&S, and Webco, as involving the complete purchase through exchange of stock, of Gilliam Brothers, Inc. Gilliam Brothers, Inc. was dissolved and no longer exists. The Respondent also purchased assets of L&S and Webco. The L&S assets were first transferred to Gilliam Brothers, Inc. and then to the Respondent. Webco assets were transferred directly to the Respondent. The Respondent employed all the employees of Gilliam Brothers, L&S, and Webco.

The Teamsters and IUOE demanded recognition on or before April 10, 1998,[3] for the respective unit employees each Union had represented before the sale of assets to the Respondent. The Respondent denied those requests.

The Respondent held meetings regarding its purchase, with former L&S, Gilliam Brothers, and Webco employees on March 28 and 29, 1998. Regional Manager Robert Van Til testified that the employees were told of the sale and that the employees' former employers ceased to exist as of midnight, March 27, 1998, but that everyone would be offered employment with the Respondent. Those employees were told about changes in working conditions including changes in insurance, wages, and pension plans. The Respondent employed all the employees at those meetings. The employees were given a schedule of benefits (G.C. Exh. 13) and health enrollment instructions (G.C. Exh. 14). The employees were told they would have 401(k) plan and the new insurance plan was explained. Nothing was was said to the employees to show there would be operational changes.

Before the sale of its assets L&S employed 19 people in a bargaining unit at Smokey Lane in North Little Rock.[4] After the purchase, the Respondent employed all 19 at Smokey Lane plus W.T. Smith and 1 additional employee. Before the sale of its assets L&S employed 10 people at Conway.[5] After the purchase, the Respondent employed all 10 of those employees at Conway plus Wayne Dunn and 1 additional employee.

Before the sale, Gilliam employed nine people in the unit at Young Road in North Little Rock;[6] seven people at 65th Street in Little Rock;[7] and five people at Jacksonville. After the purchase, the Respondent employed all those people at their same locations.[8]

Before the sale, L&S and Gilliam each employed one person while Webco employed six in the shop. The Respondent employed all eight of those shop employees. Before the sale Webco employed nine people in the Tanker Division. The Respondent employed all nine of those people in its Tanker Division. The Respondent also employed both of the two employees Webco had employed as dump truckdrivers.

The Respondent offered a document through stipulation showing that it hired a total of 31 employees from the bargaining unit represented by the Teamsters; a total of 23 employees from the bargaining unit represented by IUOE; and a total of 22 employees formerly employed by Webco and not represented by a union.

At the time of the sale of assets to the Respondent both the Teamsters and L&S Concrete Company, and IUOE and Gilliam Brothers, were parties to collective-bargaining contracts. The Teamsters/L&S bargaining unit included L&S lead truckdrivers, truckdrivers, mechanics, lead mechanics, front end loaders, and laborers. The IUOE/Gilliam Brothers bargaining unit included truck rivers, front end loaders, mechanic helpers, and mechanics.

The General Counsel called current employees Larry Stocks and Herman Whitehurst. Before the Respondent purchased L&S Concrete, Stocks and Whitehurst worked for L&S. Stocks and Whitehurst worked out of the Smokey Lane, North Little Rock facility before and after the sale to the Respondent. The Respondent continued to use the same trucks[9] as L&S at the same facility and they serviced the same customers with the same product. L&S and Gilliam Brothers drivers delivered concrete to the same jobs and employees of one could and did stop and pick up loads of concrete at the other company's locations. Stocks and Whitehurst have the same supervisors and dispatchers[10] as before the sale. Dispatchers for the former L&S and Gilliam employees have continued to work out of the same building.

Whitehurst testified that some employees transferred after the sale. His son, Randy Whitehurst, transferred from maintenance (formerly Webco) to truckdriver at Jacksonville (formerly Gilliam);[11] truckdriver Ples Goodnight transferred from Young Road (formerly Gilliam) to Conway, Arkansas (formerly L&S);[12] and Louis Sturgis transferred from Jacksonville (Gilliam) to Smoky Lane (L&S).[13] On occasion Herman Whitehurst has driven a tanker truck and on other occasions someone else' ready-mix truck rather than his regular ready-mix concrete truck. Regional Manager Van Til testified that tanker driver Greg Williams will be transferred to Dallas, Texas, and that driver Steve Hayden is spending some time helping out in dispatching.

Since mid- or late April, the Respondent has been operating an Alexander, Arkansas facility. Alfred Wylie testified that Gilliam Brothers used the Alexander facility when needed and that the facility is currently needed because of excess business. At least two and maybe three drivers have transferred to the Alexander facility since the sale.

Findings

Credibility

I credit the testimony of Larry Stock, Herman Whitehurst,and Alfred Wyles. Their testimony shows the historic background of the bargaining units, the representation by the Unions, and the duties of unit employees before and after the sale to the Respondent. I noticed nothing in their demeanor, which caused me to doubt their testimony. I was also impressed with the demeanor of Respondent witnesses Robert Van Til and Donna Ashabranner. In some areas it was apparent that Van Til and Ashabranner had more complete knowledge than Stock, Whitehurst, or Wyles. For example Van Til testified that after the sale the Respondent continued to use the same dispatchers formerly used by L&S and Gilliam, but that all the dispatchers are now separated by those receiving and those dispatching. Although I credit that testi-

[3] Due to the omission of several documents received in evidence, from the official record, the parties submitted a joint letter dated August 26, 1998. Attachments to that document included a March 31 demand by the Teamsters and an April 10, 1998 demand from IUOE, for recognition and bargaining.

[4] G.C. Exh. 9, excluding W.T. Smith—Maintenance who is shown as a Webco employee.

[5] G.C. Exh. 9, excluding Wayne Dunn—Maintenance who is shown as a Webco employee.

[6] G.C. Exh. 11, excluding Randy Whitehurst—Maintenance who is shown as a Webco employee.

[7] G.C. Exh. 11, excluding Carlton Rodney—Maintenance who is shown as a Webco employee. The 65th Street location on G.C. Exh. 11 was perhaps identified as Allied Way in other parts of the record.

[8] The Respondent also employed Randy Whitehurst and Carlton Rodney.

[9] Regional Manager Van Til testified that the Respondent has moved some of the L&S/Gilliam ready-mix trucks to Texarkana to help with an acquisition there.

[10] As shown below I credit the testimony of Robert Van Til that the Respondent does employ the L&S and Gilliam dispatchers but they are now divided by dispatchers that receive messages from those that dispatch. They are no longer assigned work on the basis of whether it comes from the old L&S and Gilliam Brothers facilities.

[11] See R. Exh. 27.

[12] See R. Exh. 29.

[13] See R. Exh. 28.

mony, in all areas not specifically mentioned here, I credit the testimony of Stock, Whitehurst, and Wyles.

Conclusions

The General Counsel argued that the Respondent has an obligation to bargain with the respective Unions on the contention that the Respondent operates its facilities with the same work forces in which its predecessors' unionized employees comprised a majority and those employees service the same customers with the same product as they did for the predecessor. *NLRB v. Burns Security Services***,** 406 U.S. 272 (1972); and *Fall River Dyeing v. NLRB***,** 482 U.S. 27 (1987).

Initially it should be noted that the General Counsel has not alleged that the Respondent engaged in unfair labor practices by failing to apply the terms of collective-bargaining agreements or by making unilateral changes in working conditions. The sole allegations of unfair labor practices are rooted in paragraph 11 of the complaint. There it is alleged that the Respondent failed to recognize and bargain with each of the Charging Parties.

Occasionally, there is a question as to when a bargaining obligation attaches. If it is perfectly clear that an employer intends to hire a majority of its work force from the work force of the predecessor employers, the bargaining obligation matures at that time. However, when a potential successor employer announces changes in working conditions before hiring, its bargaining obligation is not perfectly clear. On those occasions an employer may not become a successor until it actually hires a majority of its work force from the work force of the predecessor employers. That is the situation here. Although the Respondent announced changes in working conditions before starting operations, it did actually hire a majority of its work force from the work force of theWeaver companies. (Cf. *Spruce Up Corp***.,** 209 NLRB 194 (1974), enfd. on other ground, 529 F.2d 516 (4th Cir. 1975). The Respondent "was not a 'perfectly clear' successor under *Burns*," and "its bargaining obligation did not attach until it hired the employees on" or before March 29, 1998. **(***Banknote Corp. of America***,** 315 NLRB 1041 (1994); and *Fall River Dyeing Corp. v. NLRB***,** 482 U.S. 27, 46–52 (1987).)

On March 28–29, 1998, the Respondent met with former employees of L&S, Gilliam, and Webco. During those meetings all the employees were offered employment with the Respondent. As shown above, the Respondent employed all the former employees of L&S, Gilliam, Brothers and Webco on or before March 29. The Respondent stipulated that it hired 31 former L&S employees, 23 former Gilliam Brothers employees, and 22 of the former employees of Webco. The Respondent told the employees of changes in working conditions when it met with the employees on March 28 and 29. The Respondent made additional changes including permitting an employee to transfer to its operations outside Arkansas, beginning a new drug and alcohol abuse policy, distribution of safety equipment and uniforms and the transfer of some ready-mix trucks to Texarkana, after it started operations in the Little Rock division. The Respondent also instituted internal policies after the purchase, including involvement of its human resources department in review of certain disciplinary actions.

The Respondent also cited *Burns Security Services* and *Fall River Dyeing* in arguing that it has no obligation to bargain. The Respondent argued that the four main inquiries into whether there is a bargaining obligation include (1) whether a union continues to enjoy majority support; (2) whether the new employer is substantially the same as the predecessor; (3) whether the old bargaining units are still appropriate; and (4) whether there was any hiatus between the closing of the first and the second employers. The Respondent admitted there was no hiatus in the present situation.

In consideration of *Fall River Dyeing***,** I have focused my inquiry primarily to those matters that were the initial terms and conditions of employment as announced in the March 28 and 29 meetings as well as Respondent's initial operations (*Banknote Corp. of America,* 315 NLRB 1041 (1994)). As to the *Fall River* criteria: (1) the evidence shows that the Respondent hired all former unit employees of both L&S and Gilliam Brothers and that those employees constituted a majority of the former L&S and Gilliam bargaining units. Those employees started work with the Respondent in the same location and performed the same duties as each had for the Weaver companies immediately before March 30. There is a presumption that those employees continue to support their respective union and Respondent offered nothing to overcome that presumption (cf. *Allentown Mack Sales & Service v. NLRB,* 118 S.Ct. 818 (1998), where the employer had evidence that the employees did not continue to support the union); and (2) the new employer, (i.e., the Little Rock division of the Respondent) is substantially the same as the predecessor employers (i.e., L&S, Gilliam Brothers, and Webco). As shown the Respondent used the same employees, with the same equipment,[14] to supply the same product to the same customers; and (1) the Respondent concedes that "hiatus" is not an issue in this matter. Criteria number (3), (whether the old bargaining units are still appropriate) presents some questions.

Critical "to a finding of successorship is a determination that the bargaining unit of the predecessor employer remains appropriate" **(***Banknote Corp. of America***,** 315 NLRB 1041 (1994). Factors that occurred when and before the bargaining obligation attached as opposed to actions taken by the Respondent at a point in time after its bargaining obligation matured on March 28 and 29, 1989, are of significant importance **(***Banknote Corp. of America,* supra).

The Respondent argued that only a unit that included all the former employees of the Charles Weaver companies would be appropriate. However the true issue is not whether the overall unit would be appropriate but whether the former bargaining units continue to be appropriate after the sale to the Respondent. An overall unit may also be appropriate but that question is immaterial to the complaint allegations. The Board is not required to select a particular appropriate unit over another and is not required to even select the most appropriate unit. *Bry-Fern Care Center v. NLRB,* 21 F.3d. 706 (6th Cir. 1994).

The former bargaining units originated while L&S was a separate employer from Gilliam Brothers. The Respondent employee Herman Whitehurst has worked for the Respondent and L&S for 29 years. The Teamsters became bargaining representatives for L&S unit employees after he started work. He recalled that L&S recognized the Teamsters in 1969. Whitehurst testified that Charles Weaver bought Gilliam Brothers in 1986 and that IUOE represented the bargaining unit employees at that time.

The testimony of Stocks, Whitehurst, and Wyles illustrated that the former L&S and Gilliam Brothers unit employees have continued to perform the same work, with the same product,

[14] Regional Manager Van Til testified that instead of assigning drivers to locations they are now assigned to a specific truck. However, Van Til admitted the trucks are assigned from the specific facilities formerly operated by L&S and Gilliam Brothers.

using the same equipment,[15] out of the same locations for the same customers as before the sale to Respondent (*NLRB v. Security-Columbia Banknote Co.,* 541 F.2d 135 (3d Cir. 1976). Before the sale their overall supervisor was Louis Loetscher. Loetscher was general manager of L&S, Gilliam, and Webco and he is now the area manager for the Respondent. His supervisory duties are similar to his duties before the sale. After the sale final control over labor relations matters including terminations, involve Regional Manager Robert Van Til and Human Resources Manager Donna Ashabranner. Neither Van Til nor Ashabranner worked for L&S, Gilliam Brothers, or Webco. Immediate supervision and dispatchers did not change even though the dispatchers' assignments are now determined by whether they receive messages or dispatch.

The Respondent contended that two separate bargaining units are not appropriate because there is an intermingling of duties and personnel between the former L&S, Gilliam Brothers, and Webco units. Both bargaining units include ready-mix concrete truckdrivers and mechanics. Those drivers and mechanics perform the same functions regardless of whether they were formerly employed by L&S or Gilliam Brothers. Drivers for both L&S and Gilliam stop at locations of the other company (facilities formerly owned by either L&S or Gilliam Brothers) to pick up loads of concrete. Drivers from both companies work on the same construction sites. Mechanics employed in either the L&S or Gilliam Brothers unit work on trucks formerly owned by the other company as well. Occasionally, former L&S or Gilliam drivers have driven tanker or dump trucks owned by Webco. Employees have transferred from one of the former bargaining units to another.

However, the record illustrated those matters are similar to the way they were handled by L&S and Gilliam Brothers before the sale. As shown here, evidence, including the testimony of current employees Stocks, Whitehurst, and Wyles, regarding work before and after the sale illustrated that L&S and Gilliam Brothers drivers were also expected to pick up loads of concrete at either L&S or Gilliam locations without regard to which was their respective employer. Drivers from both those companies worked at the same times on the same construction sites and drivers used equipment from both companies and Webco equipment as well. Mechanics worked on equipment from all the companies.

The only notable difference in the way respective bargaining unit employees were treated by the Respondent as opposed to the way they were treated before the sale involved changes they were told about on March 28 and 29.[16] As shown above, the Respondent's bargaining obligation commenced on March 29 when it had hired a majority of its employees from L&S and Gilliam employees in their former bargaining units. At that time the employees had been told of the changes in wages, 401(k) entitlement, and health insurance. Some time after the purchase and employment of the unit employees, the Respondent made some additional changes including common uniforms for all employees, safety equipment for all employees and the designation of equipment as Pioneer.

Nevertheless, on March 29 the two former bargaining units were distinct entities to the extent they existed before the sale. The Respondent failed to show that changes in those units made them inappropriate.

The Respondent argued that two separate units would create confusion in its operations. However, in consideration of whether a unit is appropriate it would be inappropriate to make that determination on the basis of another bargaining unit being organized by another union. Regardless of whether other units within the Respondent's operation are or are not organized, the appropriateness of a unit must be determined on the basis of factors unique to that unit. Moreover, as to the potential problems with negotiating with two unions, there was no showing that those problems could not be handled through collective bargaining. I do not agree with the Respondent's contention that continuation of the former L&S and Gilliam bargaining units would result in the mechanics having to join both Unions. The current mechanics may continue to be represented as before the sale. As to representation or no representation of future employees especially mechanics that are not clearly within one distinct unit, those matters may be governed by law or by agreement of the parties. The Respondent cited *NLRB v. Security-Columbia Banknote Co.,* supra, but unlike there, there was no accretion problem. Here, the question involves continuation of previous bargaining units.

In *Bry-Fern Care Center v. NLRB,* supra, the court used five criteria in determining the appropriateness of a bargaining unit:

> (1) Similarity in skills, interests, duties, and working conditions.
>
> (2) Functional integration of the plant, including interchange and contact among the employees.
>
> (3) The employer's organizational and supervisory structure.
>
> (4) The bargaining history.
>
> (5) The extent of the union organization among the employees.

Here, as shown above, the employees from each former unit retained skills, interest, and working conditions similar to those in existence before the sale. The former L&S employees unit of lead truckdrivers, truckdrivers, mechanics, lead mechanics, front-end loaders, and laborers and the former Gilliam employees unit of truckdrivers, front-end loaders, and laborers continue to exercise the same duties as before the sale. On March 30, they operated from the same facilities as before the sale, with the same product for the same customers. The differences from before the sale involved an increase in wages for all employees, 401(k) entitlement, and health insurance. Those matters were noted in the Respondent's March 28 and 29 presentations to the employees. The functional integration remained as before the sale as did the Employer's organizational and supervisory structure to the extent that structure was apparent to the employees. The changes involved inclusion of some of the Respondent's Houston, Texas based management personnel reviewing certain disciplinary actions. The bargaining history showed the Unions had represented their respective units for several years. As to extent of union organization, the record shows that each of the respective Charging Parties had organized their respective unit. *Bry-Fern Care Center. v. NLRB*, supra). The court in *Bry-Fern* upheld the Board's determination of an appropriate unit.

By applying the above-mentioned criteria, it is apparent that a sufficient community of interest continues in each respective unit and that each unit is an appropriate bargaining unit.

[15] As shown above, Robert Van Til testified that some of the trucks had been moved to Texarkana. However, that action occurred after March 29, 1998.

[16] Robert Van Til admitted those were not operational changes.

I find that the record supports a finding in favor of the General Counsel. The Respondent illegally refused to recognize and bargain with the two Unions.

CONCLUSIONS OF LAW

1. Pioneer Concrete of Arkansas, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Chauffeurs, Teamsters and Helpers, Local Union No. 878 and International Union of Operating Engineers, AFL-CIO, Local Union 382 are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent by failing and refusing to recognize the Teamsters in the following described collective-bargaining agreement since March 31, 1998, has engaged in conduct in violation of Section 8(a)(1) and (5) of the Act:

> Including lead truck drivers, truck drivers, mechanics, lead mechanics, front-end loaders and laborers at its facilities formerly operated by L&S.

4. The Respondent by failing and refusing to recognize IUOE in the following described collective-bargaining agreement since April 1, 1998, has engaged in conduct in violation of Section 8(a)(1) and (5) of the Act:

> Including truck drivers, front-end loaders, mechanics helpers and mechanics at its facilities formerly operated by Gilliam Brothers.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6), (7), and (8) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that the Respondent has illegally failed and refused to recognize and bargain with the Teamsters and IUOE in the respective collective-bargaining units, I shall order the Respondent to recognize the Teamsters and IUOE as exclusive collective-bargaining representatives of its employees in the above-described bargaining units and, on request by the respective Union, meet and bargain in good faith.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The National Labor Relations Board has ordered that the Respondent, Pioneer Concrete of Arkansas, Inc., North Little Rock, Conway, Alexander, Little Rock, Maumelle, and Jacksonville, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Chauffeurs, Teamsters and Helpers, Local Union No. 878 in good faith as the exclusive bargaining representative of the employees in the following appropriate unit:

> Including lead truck drivers, truck drivers, mechanics, lead mechanics, front-end loaders and laborers at its facilities formerly operated by L&S.

(b) Failing and refusing to recognize and bargain with International Union of Operating Engineers, AFL–CIO, Local Union 382 (IUOE) in good faith as the exclusive bargaining representative of the employees in the following appropriate unit:

> Including truck drivers, front-end loaders, mechanics helpers and mechanics at its facilities formerly operated by Gilliam Brothers.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with Teamsters and IUOE as the exclusive collective-bargaining representatives in the respective units concerning terms and conditions of employment and, if understandings are reached, embody the understandings in signed agreements.

(b) Within 14 days after service by the Region, post at its facilities in North Little Rock, Conway, Alexander, Little Rock, Maumelle, and Jacksonville, Arkansas, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed a facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 29, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director, Region 26, a sworn certification of a responsible official on a from provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the act gives employees these rights.

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[18] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

To organize

To form, join, or through representatives of their own choice assist any union

To bargain collectively

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain collectively with Chauffeurs, Teamsters and Helpers, Local Union No. 878 in good faith as the exclusive bargaining representative of our employees in the following appropriate unit:

Including lead truck drivers, truck drivers, mechanics, lead mechanics, front-end loaders and laborers at our facilities formerly operated by L&S.

WE WILL NOT refuse to recognize and bargain collectively with International Union of Operating Engineers, AFL–CIO, Local Union 382 in good faith as the exclusive bargaining representative of our employees in the following appropriate unit:

Including truck drivers, front-end loaders, mechanics helpers and mechanics at its facilities formerly operated by Gilliam Brothers.

WE WILL, on request, meet and bargain with Teamsters and IUOE and, if an agreement is reached in either or both units, embody all such agreements in signed statements.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

PIONEER CONCRETE OF ARKANSAS, INC.